

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Implementation of Section 255)
of the Telecommunications Act)
of 1966)
)
Access to Telecommunications)
Services, Telecommunications)
Equipment, and Customer)
Premises Equipment by Persons)
with Disabilities)

WT Docket No. 96-198

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To: The Commission

REPLY COMMENTS OF
SELF HELP FOR HARD OF HEARING PEOPLE, INC.
AND GENE A. BECHTEL

1. Self Help for Hard of Hearing People, Inc. (SHHH) is a national educational organization representing people who are hard of hearing of all ages and degrees of hearing loss. Through a National office, five state associations and a network of 250 chapters and groups across the country, SHHH members consistently work towards increasing communication access to enable people who are hard of hearing to continue to function in mainstream society.

2. Mr. Bechtel's credentials for joining in these reply comments include the facts that (a) he and other members of his family experience life-long hearing disabilities, (b) he uses hearing aids and other assistive devices in the office, home and while participating in life experiences such as appearances in court rooms and in business conferences, (c) he is a member of SHHH and (d) has practiced communications law for more than 35 years gaining experience in FCC rulemaking, policymaking and

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enforcement activities.

3. We wish to take issue with certain comments relative to the Commission's enforcement of the provisions of Section 255 of the Telecommunications Act of 1996, codified as 47 U.S.C. §255. Whether the Commission proceeds on the basis of regulations or definitive guidelines,¹ there must be in place a concrete and effective mechanism for securing enforcement of this law, enacted by the Congress and signed by the President.

4. While voluntary efforts amongst the interested parties will play a key role in the implementation of this law, and while the marketplace process will also be central to that effort, there must be provision for enforcement action in those individual cases where it is actually needed and, more importantly, as an incentive for all concerned to live within the letter and spirit of the law. If the Commission has learned anything in the more than 60 years of its existence, it has learned that there must be enforcement mechanisms to carry out the communications laws, whether they may be license or registration denial, monetary forfeiture to the United States, monetary damage payments to aggrieved parties, cease and desist orders, or other means.

5. This is so because the Commission is not structured to police the activities of industries, companies and individuals

¹ Proceeding solely by acting on complaints, eventually creating a body of Section 255 common law, would leave a legal no man's man with only the statutory language as a frame of reference. This is no way to administer a statutory objective of nationwide application such as that involved here.

for whom it is charged with federal agency oversight. It must rely on interested parties, such as competitors, associations and individual citizens, to bring questions of law violation to its attention. Long ago, the phrase "private attorneys general" was coined to reflect the role of such parties in this process.

6. With these thoughts in mind, we shall address certain comments on the subject of enforcement.

7. AT&T, at 12-13, expresses the view that there is no apparent need to employ new enforcement procedures inasmuch as such procedures are currently in place under Sections 206-208 of the Act. We agree with that, including AT&T's view that Section 255 brings into play Sections 206-208 as applicable to entities other than common carriers. While Section 255 may not allow for private monetary remedies, none of the other enforcement remedies has been ruled out including the issuance of cease and desist orders, and the assessment of monetary forfeitures to the United States for violation of such orders under Section 501 of the Act.

8. The Telecommunications Industry Association, at 9-10, indicates that FCC regulations for informal objections under Section 208, i.e., 47 C.F.R. §§1.716-717, are sufficient. For sure, informal objections may play a role, providing a simple complaint procedure by individual citizens or organizations without the means to do anything more than that. However, in the life of Section 255, there may be occasions in which aggrieved parties have the incentive and means to take more extensive action. The entire panoply of regulations, save those providing

for private monetary remedies, should be available as needed including show cause order proceedings carried out by the Commission's staff (in which private parties may participate), 47 C.F.R. §§1.701 and 703, and formal complaints by interested parties including discovery and other litigation rights, 47 C.F.R. §§1.718-735.

9. Ericsson, at 8-9, states that the Administrative Procedure Act requires a rulemaking proceeding in order to adopt procedures under Section 255. In terms of enforcement procedures, this seems incorrect as the Administrative Procedure Act exempts from rulemaking requirements the adoption of procedural rules. 5 U.S.C. §553. Given the instant Notice of Inquiry, the Commission has the power to incorporate and/or modify existing procedural regulations cited in ¶8 above without further ado. In terms of substantive enforcement of the law, there must be clarity in the agency's requirements under Section 255. This is an argument in support of the adoption of clear guidelines, preferably in the form of regulations.

10. Pacific Telesis Group, at 26-29, generally tracks the thoughts expressed in this reply. We concur in the statement that settlements among the parties should be encouraged in the proceedings relative to Section 255 as they are in current practices under Sections 207 and 208.

11. Northern Telecom, Inc., at 11, calls the formal complaint procedures an unnecessary bureaucracy. While they may be invoked sparingly, formal complaint procedures offer the

opportunity to discover documents and statements from potential witnesses in those situations where that is the only way to get at the records within the private possession of a party charged with a law violation.²

12. Microsoft Corporation, at 30, states that the complainant should have the burden of proof and that alternative dispute resolution should be required. While sometimes the complainant should bear the burden of proof, there are times when the respondent should bear the burden of proof, a determination that should be left to the Commission under the facts of the case. ADR may well be a valuable tool for the Commission to use, as it has done in some areas, but should not be mandatory.

13. The Personal Communications Industry Association, at 10-11, proposes that complaints to the Commission should be referred to an industry review panel. This assumes a benign relationship amongst disparate and competing parties having diverse interests which may not exist. If a matter has reached the point of filing a complaint, the industry may well be the last place to which the complaint should be referred.

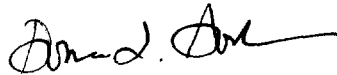
14. The Consumer Electronics Manufacturers Association, at 16-17, after having urged that only voluntary guidelines be adopted, proposes that the only Commission action should be by declaratory ruling. If these concepts were accepted, any party

² Cf., Interstate Circuit, Inc. v. United States, 306 U.S. 208 (1938) (relevant records within the private possession of a party, which it refuses to produce, may be presumed adverse to that party's interests).

could elect not to follow voluntary guidelines and to ignore declaratory rulings, thus rendering Section 255 a nullity -- which cannot be.

15. For these reasons, we ask the Commission to adopt cease and desist, informal and formal complaint procedures relative to enforcement of Section 255, incorporating existing procedures in 47 C.F.R. §§1.701, 703, 716-735 as described above.

Respectfully submitted,



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Courtesy copies mailed to counsel for parties to whom reply comments have been directed.